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IN THE

Supreme Court of the United States

OCTOBER TERM 1968

WALTER J. HICKEL, SECRETARY OF THE INTERIOR,

Petitioner,

vs.

THE OIL SHALE CORPORATION, ET AL.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF BARNETTE T. NAPIER, ET AL. IN OPPOSITION

GAIL L. IRELAND
1310 Denver Club Buil
Denver, Colorado 8020

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ARGUMENT

The Petition for Certiorari previously filed herein by the government by its terms seeks review of a single judgment entered by the United States Court of Appeals for the Tenth Circuit on February 4, 1969, in favor

of the Oil Shale Corporation, et al.[1] However, argument advanced by the government in support of its Petition runs generally to four separate cases which were consolidated for trial and appeal in the lower courts, including the case involving plaintiffs Barnette T. Napier, et al. Since four separate judgments were entered by the trial court and were affirmed by four separate judgments of the Court of Appeals, it is submitted that the petition is procedurally deficient under this Court's Rule 23(j) to present properly for review the judgment entered by the Court of Appeals in favor of plaintiffs Barnette T. Napier, et al. Accordingly, the petition should be denied insofar as these plaintiffs are concerned, or alternatively it should be noted that only the one case is the subject of this petition.

If this Court rules that the petition is sufficient procedurally to present all four judgments for review, then these plaintiffs submit that it should be dismissed on its merits for the reason that the lower court's decisions constitute perfectly proper application of the mining law as previously enunciated by this Court in Wilbur v. United States ex rel Krushnic (1930) 280 U.S. 306 and in Ickes v. Virginia-Colorado Development Corp. (1935) 295 U.S. 639. Since the case and the law pertinent

[1]At page 1 and Appendix B of the Petition reference is made only to the judgment entered in Civil Action No. 9581, Udall v. The Oil Shale Corporation, et al.

thereto is well stated in both lower court opinions, these plaintiffs are content to rely upon them at this stage in the proceedings and will not take the time of this Court to repeat what is contained therein.

Respectfully submitted,

GAIL L. IRELAND
1310 Denver Club Building
Denver, Colorado 80202

Attorney for
Barnette T. Napier, et al.